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IN THE

Supreme Court of the United States

October Term, 1969.

No. 1618.

JOSEPH CURRAN, SHANNON WALL, WILLIAM PERRY, MARTIN E. SEGAL, ABRAHAM E. FREEDMAN and LEON KARCHMER,

Petitioners,

v.

JAMES MORRISSEY, JOSEPH PADILLA, RALPH IBRAHIM, individually and on behalf of the members of the National Maritime Union of America,

Respondents.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION.

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whereas employees' salaries were fixed by the National Office without membership approval. To contend, therefore, that Article 14, Section 7 limited the NMU Officers Pension Plan to officers of the union is a wholly erroneous view.

Respondents concede that the pensions provided in collective bargaining agreements entered into with other unions for their employees is a valid exercise of the unions' right to fix salaries for employees of the unions. But, in this case they contend that the NMU Officers Pension Plan did not include employees of the union. This position is also completely unsound. As has been pointed out already in our Petition, the NMU Officers Pension Plan does not limit its coverage only to elected officers of the union. On the contrary, it covers employees who are not covered by other collective bargaining agreements. In this connection, respondents have shifted their position that the union constitution does not permit pensions to employees of the union. This shift now has been taken obviously to circumvent the provision in the union constitution which gives the National Office the right to fix salaries of the union's employees which includes the right to pensions. The fact that the collective bargaining agreements with certain employees of the union make provision for pensions completely destroys the whole fabric of respondents' argument. If the National Office has the right to fix pensions as part of salaries for some of its employees, it follows that it has the right to fix pensions as part of salaries for all of its employees.

Respondents suggest that William Perry is receiving two pensions from the union (Brief in Opposition, p. 6). This is completely incorrect. No employee and no officer of the union is receiving two pensions from the union. The pension that an individual may receive from the NMU Deep-Sea Pension Plan is a pension which a seaman earns while working as a seaman, and it is paid for solely by the companies. Only employees of the union who had previously

sailed as seamen would be eligible for such pensions if they served long enough, and their eligibility would be determined under the rules and regulations of the Deep-Sea Pension Plan. Most of the employees covered by the NMU Officers Pension Plan will be left without any pension whatsoever if the decision of the Court below is left standing. Any benefits which other employees may have received from the shipowners or any other source are completely irrelevant in determining the union's liability for pensions.

Respondents state that in *English v. Cunningham,* 282 F. 2d 848 (D. C. Cir. 1960), the court reversed the union's interpretation of its constitution. This is a completely incorrect statement. There, the Court of Appeals reversed a district court decision and approved the union's interpretation of its own election rules, citing the principle that a union's own fair and reasonable intrepretation of its constitution and rules will be accepted by the courts. In this case, both Courts below refused to follow the principle that if the union's interpretation was a fair and reasonable one, it must be accepted. Respondents conveniently misread the decision in the *English* case and its application to the facts at bar. In this connection, on this very point, this Court granted a writ of certiorari in the case of *International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith Forgers and Helpers AFL-CIO v. Hardeman,* October Term 1969, No. 1392, which action was taken on May 29, 1970, subsequent to the time our original Petition for Certiorari was filed. One of the issues on which certiorari was granted was:

> "Whether a federal court in a Section 102 proceeding reviewing an expulsion of a member by a union may apply a standard of review whereby the court substitutes its own factual findings and interpretations of the union's constitution and by-laws for those of the union."

This is precisely the point which we raise in this Petition. The lower courts, in their decisions in the *Hardeman* and instant cases, demonstrate a tendency on the part of some courts in actions under the Labor-Management Reporting and Disclosure Act of 1959 to substitute their own interpretations of the union constitution for those of the union, contrary to this Court's admonition that the Act was not intended to interfere with the right of unions to conduct their own affairs.[1] In view of the growing volume of litigation under the Act, we submit that there is urgent need for review by this Court of this problem so that both the lower federal courts and the unions can be guided in their duties and obligations under the statute.

Finally, respondents make the statement that the constitutional amendments involved in *Highway Truck Drivers and Helpers, Local 107 v. Cohen*, 284 F. 2d 162, *cert. den.*, 365 U. S. 833 and 334 F. 2d 378, *cert. den.*, 379 U. S. 921, were held to be invalid because they were "exculpatory" provisions prohibited by Section 501. This statement is also not correct. On the contrary, the Court specifically rejected the argument that the provisions there involved were "exculpatory". See 182 F. Supp. 608, 618. The basis of the *Local 107* decision was that the payments were contrary to the statute and that a constitutional amendment could not validate a payment prohibited by the statute. Here, the payments involved pensions for employees which are not prohibited by the statute. On the contrary, pensions are a wholesome, laudible action by the unions, and their authorization cannot possibly be construed to be "exculpatory".

Respondents have incorrectly read the facts and the law. Upon consideration of the foregoing, this Court

1. *Wirtz v. Glass Bottle Blowers Assn.*, 389 U. S. 463, 471, Text, n. 10 (1968); see *Wirtz v. Hotel Employees*, 391 U. S. 492, 497 (1968).

should grant the Petition for a Writ of Certiorari to the end that the decision of the Court below be reviewed and reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
Counsel for Petitioners Joseph Curran, Shannon Wall, William Perry and Abraham E. Freedman.